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HUMAN RIGHTS COMMITTEE
Fifty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

ARGENTINA

1. The Committee considered the second periodic report of Argentina (CCPR/C/75/Add.1) at its 1389th to 1391st meetings, on 21 and 22 March 1995 (see CCPR/C/SR.1389-1391). At its 1411th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the second periodic report submitted by the State party and views with satisfaction the frank and constructive manner in which the dialogue with the Committee has been conducted. It welcomes in particular the comprehensive answers provided by the high-level delegation representing the State party. None the less, the Committee expresses its regret that the report does not adequately deal with the factors and difficulties encountered with regard to the actual implementation of the Covenant. The Committee notes that this shortcoming was compensated in part by the oral update of the report, as well as the oral replies provided to the list of issues and other questions raised by the Committee during the consideration of the State party's report.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that the compromises made by the State party with respect to its recent authoritarian past, especially the Law of Due Obedience and Law of Punto Final and the presidential pardon of top military personnel, are inconsistent with the requirements of the Covenant.

C. Positive aspects

4. The Committee notes with satisfaction Argentina's continuous progress in its efforts to democratize and to match its level of human rights protection with international standards. Although much work remains to be done in this area, legislative developments since 1983 indicate that Argentina is committed to the protection of human rights at the highest levels. In this connection, the Committee welcomes the constitutional reforms of August 1994, which elevate several international human rights instruments, including the Covenant and the First Optional Protocol, above national laws and grants them constitutional status (articles 31 and 75 (22) of the Constitution). The Committee further welcomes the creation of the post of "Defender of the People", which was established in December 1993 under Act 24.284. This post is responsible for the protection of the rights of the Argentine people against possible infringement by the national authorities.

5. The Committee welcomes the programmes established for the advancement of women's equality and particularly welcomes the recognition on the part of the State party of violence against women as a matter of concern.

6. The Committee welcomes the enactment of Act 24.043 granting compensation to those who were detained by order of the Executive. It also welcomes Act 24.411 which grants some benefits to relatives of disappeared persons.

7. The Committee welcomes the revisions made to the Code of Criminal Procedure, those which are under way to the Code of Civil Procedure, the reform of the prison system and the establishment of the Office of the Government Procurator for the Prison System. It also welcomes the efforts by the State party to rehabilitate convicted prisoners and construct more facilities to alleviate prison crowding.

8. The Committee notes with satisfaction the elimination in the constitutional reforms of 1994 of the qualification that the President of the Republic must be Catholic.

9. The Committee also notes with satisfaction that the Ministries of the Interior and Foreign Affairs are conducting human rights training programmes for law enforcement officials, personnel engaged in the administration of justice, and the general public.

D. Principal subjects of concern

10. The Committee reiterates its concern that Act 23.521 (Law of Due Obedience) and Act 23.492 (Law of Punto Final) deny effective remedy to victims of human rights violations during the period of authoritarian rule, in violation of articles 2, paragraphs 2 and 3, and 9, paragraph 5, of the Covenant. The Committee is concerned that amnesties and pardons have impeded investigations into allegations of crimes committed by the armed forces and agents of national security services and have been applied even in cases where there exists significant evidence of such gross human rights violations as unlawful disappearances and detention of persons, including children. The Committee

expresses concern that pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. The Committee voices its position that respect for human rights may be weakened by impunity for perpetrators of human rights violations.

11. In the latter connection, the Committee regrets that evidence presented to the Senate against members of the armed forces, proving that they have engaged in extrajudicial executions, forced disappearances, torture, or other violations of human rights, may in some cases prevent the promotion of those accused but does not in itself cause their dismissal.

12. The Committee is concerned with threats to members of the judiciary, which through intimidation seek to compromise the independence of the judiciary as set forth in article 14 of the Covenant. The Committee is further concerned about attacks against journalists and unionists, and the lack of protection afforded to them, which restricts the enjoyment of the rights of expression and association provided for in articles 19 and 22 of the Covenant.

13. While the Committee welcomes Act 24.043 and Act 24.411, it regrets that they do not provide for compensation for victims of torture. The Committee expresses concern about current cases of excessive use of force, torture and arbitrary or unlawful detentions committed by members of the police and the armed forces which have been brought to its attention. It is concerned that there is no clear mechanism for investigating complaints of police violence that ensures there will be no reprisals against complainants, that where provincial administrations are lax in dealing with allegations of police violence the federal authorities do not ensure compliance with the Covenant, and that the perpetrators of acts of police violence generally are not punished and the victims are not compensated. It expresses concern over the delay in resolving the situation of children of disappeared persons and is especially disturbed at the failure of the report to provide any information at all on the real situation as it relates to article 7 of the Covenant.

14. The Committee is concerned that the Penal Code appears to be deficient in certain key areas that apparently conflict with the principle of presumption of innocence (article 14, paragraph 2, of the Covenant). It is concerned about the system of pre-trial detention, which it considers to be one of the remaining vestiges of authoritarian rule. The Committee also expresses concern that persons may be detained for a period longer than the maximum penalty allowed by law and regrets, in this connection, that article 317 of the Constitution does not order their release. The Committee further notes that bail is established according to the economic consequences of the crime committed and not by reference to the probability that the defendant will not appear in court or otherwise impede due process of law. Nor is it compatible with the presumption of innocence that the length of pre-trial detention is not a product of the complexity of the case but is set by reference to the possible length of sentence. The Committee is also concerned that accused persons are held in detention in the same facilities as convicted persons. It expresses concern that the grounds for judicial authorization of telephone tapping may be too broadly drawn.

E. Suggestions and recommendations

15. The Committee recommends that the State party, in accordance with article 2, paragraph 2, of the Covenant, develop mechanisms for compensating all remaining victims of past violations of human rights by amending Act 24.043 or enacting appropriate legislation for the victims of such crimes. The Committee especially recommends that appropriate care be taken in the use of pardons and general amnesties so as not to foster an atmosphere of impunity (see the Committee's general comment No. 7 (16)). The Committee recommends that appropriate procedures be established to ensure that members of the armed forces or security forces against whom sufficient evidence of involvement in past gross human rights violations exists will be removed from their posts.

16. The Committee urges the State party to continue to investigate the whereabouts of disappeared persons, to complete urgently investigations into the allegations of illegal adoption of children of disappeared persons, and to take appropriate action. It also urges the State party fully to investigate recent revelations of murders and other crimes committed by the military during the period of military rule and to take action on the findings.

17. The Committee notes that the Office of the Under-Secretary-General of Human and Social Rights falls under the jurisdiction of the Ministry of the Interior, which also regulates the police forces. The Committee recommends that measures to guarantee the independence of the Under-Secretary-General be taken, particularly with respect to investigations of human rights violations.

18. The Committee urges that all necessary steps be taken to prevent cases of excessive use of force, torture, arbitrary detention or extrajudicial execution by members of the armed forces or the police. These steps should include preventive disciplinary and punitive measures, as well as appropriate training. All violations should be investigated and the victims compensated.

19. The Committee recommends that special protection be provided to journalists and members of trade unions under threat or intimidation so as effectively to ensure the rights provided for in articles 19 and 22 of the Covenant.

20. With respect to the Code of Criminal Procedure, the Committee recommends that the system of pre-trial detention be carefully reviewed. Legal safeguards should be established to ensure that, in instances where pre-trial detention exceeds the maximum applicable penalty for a crime, the defendant will be released without qualification. The Committee urges the State party to define clearly the purpose of pre-trial detention and to set the length of detention accordingly, applying the principle of presumption of innocence. It recommends the same consideration in the setting of bail.

21. The Committee recommends that the State party review and include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

22. The Committee recommends that Argentina include, in its next periodic report, information on the measures adopted to follow up on the present comments

and give effect to its suggestions and recommendations. It further recommends that its comments be widely disseminated and incorporated into the curriculum of the human rights training programmes organized for law enforcement officials and administrators of justice.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

NEW ZEALAND

1. The Committee considered the third periodic report of New Zealand (CCPR/C/64/Add.10 and HRI/CORE/1/Add.33) at its 1393rd to 1395th meetings, on 23 and 24 March 1995 (see CCPR/C/SR.1393-1395). At its 1411th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on law and practice relating to the implementation of the Covenant and is in full conformity with the Committee's guidelines. The Committee appreciates the fact that the report shows continuous development in the protection of rights and allows the dialogue with the Committee to take place as an unbroken continuation of the examination of the initial and second reports. The Committee is also grateful for the oral responses provided by the competent delegation and considers that the dialogue with the State party has been most fruitful and constructive.

3. The Committee commends the State party for the core document (HRI/CORE/1/Add.33), which has been drawn up in accordance with the consolidated guidelines for the initial part of reports to be submitted by States parties under the various international human rights instruments (HRI/1991/1).

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee finds that there are no important difficulties which may affect the effective implementation of the Covenant's provisions by the Government of New Zealand.

C. Positive aspects

5. The Committee notes with appreciation the level of achievement in respect of human rights in New Zealand. It particularly welcomes the positive developments that have been realized following recommendations of the Committee at the end of the consideration of the second periodic report of New Zealand. Among these developments the Committee notes the accession to the First Optional Protocol to the Covenant and the ratification of the Second Optional Protocol to the Covenant following the adoption of the Abolition of the Death Penalty Act, 1989.

6. The Committee considers the adoption and entry into force on 25 September 1990 of the Bill of Rights Act, which expressly affirms New Zealand's commitment to the Covenant and which provides a statutory basis for the protection of human rights and fundamental freedoms in New Zealand, as an important step towards the full protection of the rights set forth in the Covenant. The Committee also welcomes the passage into law of the Privacy Act 1993, which promotes and protects individual privacy, and of the Human Rights Act, which entered into force on 1 February 1994. The latter Act further enhances protection of article 2, paragraph 1, of the Covenant by extending the grounds on which discrimination is prohibited. The Act also expands the role of the Human Rights Commission and enables it to inquire into any matter where it appears that human rights have been infringed.

7. The Committee welcomes widely based legislation to provide protection against domestic violence. The Committee is also pleased to note the provision of appeals procedures for refugees and that applicants for refugee status are entitled to work pending a decision on their status. Planned improvements to prison conditions are also welcome.

8. The Committee welcomes the important developments that have occurred in relation to the interests of the Maori. Among these developments the Committee notes the increasing importance of the work of the Treaty of Waitangi Tribunal in dealing with Maori claims against the Crown. The Committee also appreciates the fact that New Zealand has dedicated the first year of the International Decade of the World's Indigenous People to the Maori language. In this connection, the Committee takes note with satisfaction of the adoption of a language nest programme whereby Maori language, customs and values are taught to pre-school children, as well as other programmes set up to promote Maori language, art and culture.

9. The Committee also welcomes the changes introduced in the electoral law which may provide greater opportunities for the representation of minority groups, Maori and women.

10. With regard to the right of self-determination, the Committee welcomes the development of local institutions of government in Tokelau and the gradual delegation of powers to Tokelauan authorities, which corresponds to the desire of the people of Tokelau to be self-reliant to the greatest extent possible.

D. Principal subjects of concern

11. The Committee regrets that the provisions of the Covenant have not been fully incorporated into domestic law and given an overriding status in the legal system. Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it does not repeal earlier inconsistent legislation, and has no higher status than ordinary legislation. The Committee notes that it is expressly possible, under the terms of the Bill of Rights, to enact legislation contrary to its provisions and regrets that this appears to have been done in a few cases.

12. The Committee expresses concern about the absence of express provision for remedies for all those whose rights under the Covenant or the Bill of Rights have been violated.

13. The Committee regrets that the operation of the new prohibited grounds of discrimination, contained in section 21 of the Human Rights Act 1993, is postponed until the year 2000. It also notes with concern that the prohibited grounds of discrimination do not include all the grounds in the Covenant and, in particular, that language is not mentioned as a prohibited ground of discrimination.

14. The Committee is concerned about provisions in the Criminal Justice Amendment Act which provide for a sentence of indeterminate detention for offenders convicted even once of serious crimes who are likely to re-offend in a similar manner. The imposition of punishment in respect of possible future offences is inconsistent with articles 9 and 14 of the Covenant.

15. In relation to the right of freedom of expression, the Committee expresses its concern over the vagueness of the term "objectionable publication" and the fact that section 121 of the Films, Videos and Publications Classification Act makes the "possession of any objectionable publication" a criminal offence, even if the person concerned has no knowledge or no reasonable cause to believe that the publication is considered to be objectionable.

16. The Committee is concerned about the fact that, while the Human Rights Act contains a provision corresponding to article 20, paragraph 2, of the Covenant, this provision does not include a prohibition of advocacy of religious hatred.

17. The Committee regrets that despite improvements, Maori still experience disadvantages in access to health, education and employment. The Committee is also concerned that the proportion of Maori in Parliament and other high public

offices, liberal professions and in the senior rank of civil service remains low.

18. The Committee also regrets the delay in the submission of reports under the Covenant by the Tokelau and the Cook Islands governments and reminds the Government of New Zealand of its obligations under the Covenant in this regard.

E. Suggestions and recommendations

19. The Committee recommends that the State party take appropriate measures to incorporate all the provisions of the Covenant into domestic law and to provide remedies for all persons whose rights under the Covenant have been violated.

20. The Committee recommends that the Bill of Rights be revised in order to bring it into full consistency with the provisions of the Covenant and to give the courts power as soon as possible to strike down or decline to give effect to legislation on the ground of inconsistency with Covenant rights and freedoms as affirmed in the Bill of Rights.

21. The Committee recommends that the State party revise the provisions relating to "indeterminate sentence of preventive detention" contained in the Criminal Justice Amendment Act in order to bring the Act into full consistency with articles 9 and 14 of the Covenant.

22. The Committee equally recommends amendment of the Films, Videos and Publications Classification Act by a more specific definition of "objectionable publication" or by removing criminal liability for possession without knowledge of or reasonable cause to believe in the objectionability of material.

23. The Committee expresses the hope that any decisions to be taken about future limitations to the entitlement of Maori to advance claims before the Waitangi Tribunal will take full account of Maori interests under the Treaty of Waitangi.

24. The Committee recommends that the State party review and include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

25. The Committee recommends that the State party review its reservations relating to articles 10 and 22 of the Covenant with a view to withdrawing them.

26. The Committee would appreciate receiving in the next periodic report information on the experience gained in applying the new Electoral Act and about the Equal Employment Opportunity provisions and their effects on women's entitlement to equal pay and equal employment opportunity. The Committee would also like to be informed on further activities of the National Human Rights Commission and the Treaty of Waitangi Tribunal, and about progress in prison reform.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

PARAGUAY

1. The Committee considered the initial report of Paraguay (CCPR/C/84/Add.3 and HRI/CORE/1/Add.24) at its 1392nd and 1396th meetings, on 22 and 24 March 1995 (see CCPR/C/SR.1392 and 1396). At its 1412th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the initial report submitted by the State party and views with satisfaction the cooperative attitude of the delegation in engaging in the dialogue with the Committee. It regrets, however, that the report, while providing detailed information on prevailing legislation in Paraguay, does not adequately deal with the actual state of implementation of the Covenant in practice and the difficulties encountered during implementation. Although the information provided orally by the delegation has addressed some of the concerns of the Committee, the Committee has obtained only a partial picture of the human rights situation in the country.

3. The Committee commends the State party for the core document (HRI/CORE/1/Add.24), which has been drawn up in accordance with the consolidated guidelines for the initial part of reports to be submitted by States parties under the various international human rights instruments (HRI/1991/1).

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee recognizes that the State party, which is emerging from a change of government in 1989 that ended a long period of dictatorial rule, is undergoing a transition towards democracy in which the infrastructure necessary for the implementation of the Covenant has not been fully developed. The Committee understands that the many encouraging legislative initiatives with respect to human rights are being implemented with difficulty, and that a full assessment of such implementation is not yet possible.

C. Positive aspects

5. The Committee notes with satisfaction Paraguay's continuous progress since 1989 in its efforts to democratize and to match its level of human rights protection with international standards. It particularly welcomes the signing and ratification of a number of international human rights instruments, including the Covenant and the First Optional Protocol, and the legislative and administrative steps taken to advance their implementation. The Committee also commends the State party for ratifying the Covenant without entering any reservations.

6. The Committee particularly welcomes the promulgation of the 1992 Constitution, which incorporates provisions for the protection of civil and political rights and grants constitutional status to a number of international human rights instruments, including the Covenant, thus elevating them above national law.

7. The Committee further welcomes the creation of machinery to receive complaints and manage various aspects of human rights issues, including the Directorate-General for Human Rights under the Ministry of Justice and Labour, the Office of the Ombudsman, and the Human Rights Commissions established in the two Chambers of Congress.

8. The Committee welcomes the amendments made to the Civil Code in 1992 and other relevant legislation that advanced the equal enjoyment of civil and political rights by women. It also welcomes the establishment of the Women's Secretariat.

9. The Committee appreciates the declaration made by the delegation according to which the Government will not enact any amnesty law, and that, on the contrary, concrete steps have already or are being taken to make accountable perpetrators of human rights abuses under the past dictatorial regime. It notes in this regard that such laws, where adopted, are preventing appropriate investigation and punishment of perpetrators of past human rights violations, undermine efforts to establish respect for human rights, further contribute to an atmosphere of impunity among perpetrators of human rights violations, and constitute impediments to efforts undertaken to consolidate democracy and promote respect for human rights.

10. The Committee notes with satisfaction the Government's initiative to make public the military's archives, thus enabling individuals to file complaints based on the information contained in those archives.

11. The Committee notes with satisfaction the incorporation of human rights issues into the formal secondary education curriculum.

12. The Committee welcomes Paraguay's efforts to modernize the judicial process with international assistance. It also notes that a revision of the Penal Code and the Code of Criminal Procedure is under way.

13. The Committee takes note of the will of the State party to ratify the Second Optional Protocol to the Covenant on the abolition of the death penalty.

D. Principal subjects of concern

14. The Committee regrets that no information was provided about the compensation of victims of human rights violations during the dictatorship.

15. The Committee expresses concern about the continuing occurrence of torture and ill-treatment of detainees, even after the restoration of democracy in 1989. In this connection, the Committee is concerned that there remain officials who are identified and committed to the authoritarian practices of the former regime.

16. The Committee is concerned that, despite constitutional guarantees for the rights of women, women continue to receive unequal treatment in Paraguay, owing in part to the continuation of traditional attitudes and outdated laws that clearly contradict the provisions of the Covenant. These would include laws that are more lenient in instances of infanticide committed to protect the honour of a woman than in ordinary cases of homicide and laws that make distinctions in the punishment accorded to persons who rape or abduct women depending on the marital status of the victim. It further notes that labour laws do not adequately protect the rights of women. It notes that domestic work, which is a principal occupation among women, is excluded from minimum wage laws.

17. The Committee expresses its concern about the high level of deaths among expectant mothers referred to in the report. In this regard, it regrets that the State party could not provide information about the effect of the enforcement of abortion laws on this high level of deaths.

18. The Committee is concerned that national laws in conflict with the Constitution remain on the books. In addition, some constitutional provisions, such as the right to compensation for violation of rights (article 39), still require implementing laws.

19. The Committee notes with concern the practice of not separating accused from convicted persons in prisons, which violates article 10, paragraph 2 (a), of the Covenant. The Committee also notes with concern that there are not sufficient measures to limit pre-trial detention, which makes such detention a

common practice rather than an exceptional measure. In the view of the Committee, the conditions in the law do not provide sufficient justification for pre-trial detention in the absence of a reasonable possibility of escape from justice or danger to the community.

20. The Committee expresses concern about the lack of information regarding the independence of the judiciary, principally as to the security of tenure.

21. The Committee is concerned that the predominant role of the Catholic Church in Paraguay appears to lead to certain de facto discrimination against other religions.

22. The Committee is concerned that poverty and lack of education, particularly among indigenous people, adversely affect many people in their ability to enjoy civil and political rights.

23. The Committee notes that the restriction on voting for students of military schools seems to be an unreasonable restriction on article 25 of the Covenant on the right to participate in public life.

E. Suggestions and recommendations

24. Regarding the application of the Covenant, the Committee requests that it be informed in future periodic reports of the State party of any instances that may arise where the Covenant was directly invoked in the courts, as well as the results of any such proceedings.

25. The Committee commends the State party, in accordance with article 2, paragraph 2, of the Covenant, for its efforts to bring to justice perpetrators of past human rights abuses. It urges the State party to continue to investigate allegations of human rights violations, past and present, for which purpose all archives of the past regime should be carefully explored. It further urges the State party to act on the findings of its investigations, to bring to justice the perpetrators and to provide proper compensation to the victims, particularly with respect to continuing occurrences of torture and ill-treatment by the police and security forces. The Committee recommends that an independent mechanism be instituted for dealing with complaints of police violence and that the existence of this mechanism be publicized.

26. The Committee urges the State party to comply with article 10, paragraph 2 (a), of the Covenant by separating in prison accused persons from convicted prisoners. The Committee further recommends that the State party review its laws and practices concerning pre-trial detention to ensure that such detention is not regarded as the general rule and that, where it is imposed, its period is subject to strict limits, in conformity with article 4 of the Covenant.

27. The Committee recommends that all national legislation on women be reviewed with a view to modernizing the outdated legal standards currently in force to bring them into line with the relevant provisions of the Covenant. The Committee recommends in particular that the State party review its laws on

criminal offences committed against women and all labour laws that discriminate against women and take the measures necessary to overcome traditional attitudes concerning the role of women in society. It further recommends that the State party encourage the political participation of women in public, particularly in political life, which remains low despite the legal advances that have reduced restrictions in this area.

28. The Committee requests the State party to provide information in its next report about the incidence of illegal abortion, the relationship between illegal abortions and the high incidence of maternal mortality, and its implementation of article 61 of the Constitution.

29. The Committee recommends that the State party undertake a thorough review of its national legislation to ensure conformity with the standards set by both the Constitution and the Covenant. It recommends in this connection that the Covenant and the specific recommendations made in the present comments be taken into account in the revision of the Penal Code currently under way.

30. The Committee recommends that the State party include in its next report comprehensive information on the issues raised during the consideration of the report, particularly on the effectiveness of the laws under review or in existence, the evolving roles of the institutions established for the protection of human rights, and the system of coordination of the various institutions.

31. The Committee recommends that the State party review and include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

32. The Committee recommends that the Covenant, the Optional Protocols and the Committee's comments be widely disseminated among the Paraguayan public and that the scope of human rights education be extended to members of the police and security forces, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

HAITI

1. In the light of past and continuing events in Haiti affecting the human rights guaranteed by the International Covenant on Civil and Political Rights, and in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee requested the Government of Haiti, on 27 October 1994, to submit a special report, not later than 31 January 1995 and if necessary in summary form, describing, in particular, the implementation of articles 6, 7, 9, 10 and 14 of the Covenant during the current period, for consideration by the Committee at its fifty-third session.

2. In response to that request, the Government of Haiti submitted a report on 27 February 1995 (CCPR/C/105), which was considered by the Committee at its 1397th and 1398th meetings, on 27 March 1995 (see CCPR/C/SR.1397 and 1398). At its 1412th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

3. The Committee welcomes the willingness of the Government of the State party to cooperate and to enter into a constructive dialogue with the Committee on the application of the Covenant in Haiti, as evidenced by the submission of the special report and the sending of a high-level delegation to present the report. The Committee notes that, while providing some information about constitutional and legal measures giving effect to articles 6, 7, 9, 10 and 14, the report lacked information on the practice concerning human rights and on the difficulties affecting the application of the Covenant in the country. The Committee, mindful of the difficulties facing all branches of government in

Haiti since the restoration of the legitimate Government, thanks the delegation for endeavouring to reply to the questions raised in the course of the dialogue and thus, to a certain extent, make up for the report's shortcomings.

B. Factors and difficulties affecting the application of the Covenant

4. The Committee notes that Haiti is only now emerging from a long and devastating military dictatorial past during which grave human rights violations occurred, including summary executions, torture and other inhuman or degrading treatment and arbitrary arrests and detentions. The country has only recently initiated a process of recovery and has just embarked on a course of transition to democracy. The Committee further notes that, despite efforts undertaken by the Government, political and social attitudes still prevalent in the country are not conducive to the promotion and protection of human rights. Violence and disorder continue to disrupt society and many weapons remain in the hands of members of former paramilitary groups and the public in general. The lack of a functioning judicial system, and deeply rooted social and economic problems, affect the application of the Covenant.

C. Positive aspects

5. The Committee welcomes the restoration of the legitimate Government of Haiti and the considerable efforts made by the present Government to ensure respect for human rights. In this connection the establishment by presidential decree of a National Commission on Truth and Justice with the task of carrying out investigations into human rights violations and ensuring justice for the victims of such violations is particularly appreciated. The Committee also notes the creation of a civilian police force separated from the armed forces as an important step. The Committee appreciates the fact that programmes for the training of judges and police officers are being initiated.

6. The Committee notes with satisfaction the adoption of a number of laws directly affecting the establishment and development of institutions and policies for the protection of human rights, such as the recent Act declaring all paramilitary groups illegal, the Territorial Communities Act, which eliminates the former autocratic system of section chiefs and provides for local authorities elected by the people, and the Electoral Act. The Committee also welcomes the beginning of the process which will lead to the holding of parliamentary elections in June 1995 and presidential elections in December 1995.

D. Principal subjects of concern

7. Given the general conditions prevailing at the present time in Haiti, the Committee has not detailed all its concerns relating to inconsistencies between provisions of the legislation, including the Constitution and laws, on the one hand, and the Covenant on the other hand.

8. The Committee expresses its concern about the effects of the Amnesty Act, agreed upon during the process which led to the return of the elected Government of Haiti. It is concerned that, despite the limitation of its scope to political crimes committed in connection with the coup d'état or during the past regime, the Amnesty Act might impede investigations into allegations of human rights violations, such as summary and extrajudicial executions, disappearances, torture and arbitrary arrests, rape and sexual assault, committed by the armed forces and agents of national security services. In that connection, the Committee wishes to point out that an amnesty in wide terms may promote an atmosphere of impunity for perpetrators of human rights violations and undermine efforts to re-establish respect for human rights in Haiti and to prevent a recurrence of the massive human rights violations experienced in the past.

9. The Committee emphasizes the importance of investigation of human rights violations, determination of individual responsibility and fair compensation for the victims, and regrets that the Commission on Truth and Justice has not yet initiated its work.

10. The Committee is concerned that failure to screen and exclude human rights violators from service in the military, the police force and the judiciary will seriously weaken the transition to security and democracy. The Committee is also concerned that human rights violations by members of the armed forces, agents of security services, and members of former paramilitary groups still occur. The Committee notes with particular concern the lack of full and effective control by civilian authorities over the military. The Committee is concerned that the composition, command and number of the armed forces is not clearly defined.

11. The Committee expresses its concern at the numerous problems affecting the proper functioning of the justice system, including long periods of pre-trial detention and overcrowding of prisons. It wishes to point out, in that regard, that, unless a serious effort is undertaken to reform the judiciary and re-establish a proper functioning of the judicial system, efforts to strengthen the rule of law and to promote respect for human rights will be seriously undermined.

12. The Committee is concerned about allegations of forced labour of minors in violation of article 8 of the Covenant.

E. Suggestions and recommendations

13. In view of the fact that the Amnesty Act was adopted before the reinstallation of the legitimate Government, the Committee urges the State party to apply that Act in conformity with the Covenant and to exclude from its scope the perpetrators of past human rights violations.

14. The Committee emphasizes the obligation of the State party under article 2, paragraph 3, of the Covenant to ensure that victims of past human rights violations have an effective remedy. It strongly recommends that the Commission on Truth and Justice initiate its work as soon as possible and that other mechanisms be set up to investigate human rights violations by members of the